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ABSTRACT

The first-ever study of its kind, this report chronicles the experiences of lesbian, gay, bisexual and transgendered (LGBT) youth in the New York juvenile justice system. This report combines existing social science research and personal interviews with juvenile justice professionals and LGBT youth and reveals that the system is plagued by discrimination and bias against LGBT youth. A major goal of this report is to bring attention to an otherwise largely invisible segment of the juvenile justice population. The research identified six major issues that LGBT youth confront once in the system: a lack of awareness about the existence of LGBT youth and their needs; a lack of appropriate sentencing options appropriate; the safety of detained LGBT youth; professionals who lack expertise and training on how to meet the needs of this population; a lack of specific policies relating to LGBT youth; and a lack of services that are sensitive to the needs of LGBT youth. This report concludes with further recommendations on moving forward, including the formulation of task forces by the city and state juvenile justice agencies. It is suggested that advocates in the juvenile justice and LGBT communities use this report to raise their own awareness and attention to LGBT youth in the system as well as lobby for policy changes to improve the system overall. (Contains 56 references.) (GCP)

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justice for all?

A report on lesbian, gay, bisexual and transgendered youth in the New York juvenile justice system

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Executive Summary

The first-ever study of its kind, this report chronicles the experiences of lesbian, gay, bisexual and transgendered (LGBT) youth in the New York[1] juvenile justice system (hereafter, "the juvenile justice system" or "the system"). Commissioned by the Lesbian and Gay Youth Project of the Urban Justice Center, the report was authored by a team of students at the Robert F. Wagner Graduate School of Public Service at New York University. This report combines existing social science research and personal interviews with juvenile justice professionals and LGBT youth and reveals that the system is plagued by discrimination and bias against LGBT youth.

While concrete data estimating the precise number of LGBT youth in the juvenile justice system do not exist, social science research documents the paths through which LGBT youth commonly enter the system and suggests their overrepresentation in the juvenile justice population. Social stigma and rejection—stemming from problems with family members and peers and frequently leading to substance abuse, mental health problems and rebellion—often results in LGBT youth leaving home. Whether removed by the child protection agency due to parental abuse or neglect, kicked out of their homes or feeling they have no choice but to leave, LGBT youth often end up homeless. In fact, up to 40 percent of homeless youth are believed to be LGBT.[2] Research and interviews suggest that LGBT youth often commit crimes such as robbery or prostitution in order to survive, crimes for which LGBT youth are most commonly arrested. Based on these figures, as well as estimates gathered through interviews, LGBT youth may constitute anywhere from 4 to 10 percent of the juvenile justice population.

[1] The primary focus of this report is on New York City but includes statewide information insofar as youth from New York City are placed in state-run facilities throughout New York State.

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Once in the system, our research identified six major issues that LGBT youth confront:

1. There is a lack of awareness about the existence of LGBT youth and their needs, including a lack of scholarly research, a general invisibility of this population within the system and many misperceptions about LGBT youth among juvenile justice professionals.

2. There is a lack of sentencing options appropriate for LGBT youth. This scarcity can result in LGBT youth being sentenced to facilities that are more restrictive than their crimes warrant, because no other options exist. Since LGBT-sensitive programs and facilities are unavailable, LGBT youth are often segregated from the general population and isolated for their safety.

3. The safety of detained LGBT youth is in jeopardy. They are often subject to verbal and physical harassment from both staff and peers, as well as feelings of isolation due to not fitting-in.

4. Professionals who work with LGBT youth lack expertise and training on how to meet the needs of this population. Judges, attorneys and social workers have little formal training relating directly to working with the unique needs of this population. Similarly, facility staff are often uneducated regarding LGBT youth and thus frequently cause problems for LGBT youth rather than helping solve them.

5. Few juvenile justice institutions have specific policies relating to LGBT youth, and general policies are often inconsistently applied in cases of LGBT youth. Existing policies do not speak to their needs, and staff is allowed wide discretion in brining general policies to bear more harshly on LGBT youth.

6. There is a lack of services that are sensitive to the needs of LGBT youth. The social services that are provided tend to compartmentalize LGBT-related identity issues, considering them separate from other issues in the treatment needs of these youth.

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[2] Laurie Schaffner, "Violence and Female Delinquency: Gender Transgressions and Gender Invisibility," *Berkeley Women's Law Journal* 14 (1999): 40.

Based on the above findings, the following recommendations are intended to help the various professionals in the juvenile justice system improve the treatment of LGBT youth.

1. Intervention and Decriminalization: Recommendations for Community Organizations and Policy Makers
    a. Increase resources to prevent at-risk LGBT youth from entering the system
    b. Decriminalize non-violent survival crimes with which LGBT youth are commonly charged

2. Representation: Recommendations for Attorneys
    a. Develop and implement more training to help attorneys work with LGBT clients
    b. Create a resource manual to help attorneys represent LGBT clients and address their unique needs
    c. Take a more active role in the placement of LGBT youth and advocate for more placement options

3. Adjudication: Recommendations for Judges
    a. Advocate for more sentencing options so that LGBT youth can be placed in appropriate environments
    b. Encourage and facilitate peer education and training for judges on LGBT issues

4. Placement: Recommendations for Administrators and Staff
    a. Develop more placement options for LGBT youth that appropriately reflect the severity of their offenses and are safe and sensitive environments
    b. Implement mandatory training throughout facilities to educate staff on diversity issues and the specific needs of LGBT youth
    c. Promote consistent and clear policies governing how to handle issues relating to LGBT youth in juvenile justice facilities
    d. Facilitate access to services and resources that address the needs of LGBT youth

The stories of LGBT youth in the system encapsulated in this report reveal deep and complex problems that must be investigated further. Thus, this report concludes with further recommendations on moving this process forward, including the formulation of task forces by the city and state juvenile justice agencies. Advocates in the juvenile justice and LGBT communities should use this report to raise their own awareness and attention to LGBT youth in the system as well as lobby for policy changes to improve the system overall.

Introduction

Few youth, if any, would choose to be in the juvenile justice system.[3] It is by no means an enjoyable place. Yet interviews with judges, lawyers, staff and youth involved with the juvenile justice system confirm that the experience is uniquely difficult for LGBT youth. The premise of this report is that it is unduly harsh and unjust for the experiences of LGBT[4] youth in the system to be markedly and chronically worse than those of their heterosexual counterparts. Through systematic, first-person interviews with government officials, lawyers, social workers, judges, community activists, mental health experts, service providers, facility staff and, most importantly, LGBT youth who have been involved in the juvenile justice system, we have documented the experiences of LGBT youth in the system and culled strategic recommendations for reform.

The authors of this report are students at the Robert F. Wagner Graduate School of Public Service at New York University, functioning as consultants to the Urban Justice Center's Lesbian and Gay Youth Project (LGYP). The LGYP is one of six projects of the Urban Justice Center, a 17-year-old organization founded to address the needs of underserved populations in New York City. It is the only direct, grassroots legal service program in the nation targeted to LGBT youth, specifically advocating to improve the conditions facing LGBT youth in New York City.

This project is the first undertaking of its kind. To date, no other studies have extensively and systematically examined the issues facing LGBT youth in the juvenile justice system, either in New York or nationally.[5] Thus, a major goal of this report is to bring attention to an otherwise largely invisible segment of the juvenile justice population. While, at its

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[3] Herein, the juvenile justice system, described with greater detail below, refers to the network of detention facilities, group homes, probation and schooling programs charged with serving youth who are found to be juvenile delinquents or juvenile offenders, as well as the institutions involved in making such findings, including family courts and lawyers representing both the government and the youth.

[4] Wherever possible, this report strives to include lesbian, gay, bisexual and transgender youth. However, certain studies or quotations only reference the experience of a segment of the population—for instance, transgendered girls—and are reported herein without alteration.

[5] Kim Godfrey, administrator, Council for Juvenile Corrections Administrators, personal interview, 15 October 2000.

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worst, the system evidences patterns of abuse and mistreatment of LGBT youth, even at its best, the system is widely ignorant of the existence and needs of LGBT youth. Therefore, this report seeks to bring the issues of LGBT youth in the system to the fore, aiming to address not only actions of harassment and bias against LGBT youth, but also inaction or the failure to take steps to address the specific needs of this population.

Any evidence that LGBT youth in the system are being systemically abused or neglected is sufficient to warrant change, whether affecting ten youth or ten thousand. Due to a dearth of research on this topic thus far, conclusive estimates of the numbers of LGBT youth in the system are hard to establish. While social scientists generally estimate that ten percent of school-aged youth are or will become lesbian, gay, bisexual or transgendered,[5] those involved with the New York juvenile justice system estimate that anywhere from 4 to 10 percent of the juvenile delinquent population identify as LGBT.[7] The actual percentage may be higher since LGBT youth are over-represented in populations that are more likely to be involved with the system; for instance, it has been estimated that more than 40 percent of homeless youth identify as LGBT, and homeless youth are at greater risk of arrest[8] and, therefore, involvement in the system. For instance, one study found that two-thirds of youth living in homeless shelters and four-fifths of youth living on the streets have attempted or committed theft-

Evidence that LGBT youth are being systematically abused or neglected is sufficient to warrant change, whether affecting ten youth or ten thousand.

[5] Jonathan Vare, "Understanding Gay and Lesbian Youth: Sticks, Stones and Silence," *The Clearing House* 71 (1998): 327-31.
[7] This statistic was derived from interviews conducted for this report.
[8] Schaffner, "Violence and Female Delinquency" 40.

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related crimes.[9] Such over-representation of LGBT youth in the population most at risk of detention logically leads to an over-representation of LGBT youth in the system. Although LGBT youth may seem underrepresented in the system due to a reluctance to "come out" or reveal their sexual or gender identity to others, fearing for their safety and wanting to blend in,[10] there are indications that a significant number of youth in the system identify as LGBT or are questioning their sexual orientation or gender identity.[11]

In his research, Dr. Gerald Mallon, an expert on the sexual orientation and gender identity issues of youth, correlates the low numbers of self-identifying LGBT youth to the socialized heterocentric climate in the legal system. "Because gay and lesbian children and youth are socialized to hide their orientation, and because of the systemic bias that makes it necessary for many of them to hide for their own safety, there are no figures to document how many children and youths in the child welfare system are affected."[12]

Since data is not systematically collected on LGBT youth in the juvenile justice system, this report focuses on individual experiences of LGBT youth, as highlighted by interviews with professionals in the system and youth themselves, to document the problems LGBT youth are facing. The individual stories of these youth in the system are alarming. In one case, a counselor in a facility petitioned to extend a lesbian's placement for allegedly holding hands with another girl under a bathroom stall and subsequently mouthing, "I love you" to the girl from across the room.[13] In another, a young transgendered girl[14] sentenced to a juvenile justice facility on robbery charges was arbitrarily labeled a sex offender by facility staff, made to wear clothes designating sex offenders in the facility, and told to participate in sex offender therapy.[15] Facility staff

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[9] *Youth With Runaway, Throwaway and Homeless Experiences ... Prevalence. Drug Use and Other At-Risk Behaviors* (Washington, DC: United States Department of Health Administration of Children and Families, 1995) <http://www.ncfy.com/chapt2_youth_run.htm>.

[10] Gerald Mallon, Ph.D., *Let's Get this Straight: A Gay and Lesbian Affirming Approach to Child Welfare* (New York: Columbia University Press, 1999) 80.

[11] The term "sexual orientation" connotes the nature of one's sexual attraction to others, whether same-sex attraction (lesbian or gay), opposite-sex attraction (heterosexual) or attraction to both sexes (bisexual). The term "gender identity" refers to the gender one identifies as in relation to one's biological sex. Those who identify as a gender other than their biological sex or in some way present their gender as different than their biological sex are transgendered.

[12] Mallon, *Let's Get this Straight* 80.

[13] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 12 December 2000.

[14] A transgendered person is one who identifies as a gender other than her or his biological sex. Thus, the transgendered girl referred to here was born biologically male. The term transgendered need not be limited to those individuals who cross dress and/or take hormones or undergo surgery to alter one's outward gender appearance.

[15] Anonymous youth, personal interview, January 2001.

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told one gay boy that he couldn't participate in recreational activities because they thought that the other boys wouldn't want to be in the locker room with him.[16] Another transgendered girl was placed in isolation at every facility she attended, since staff believed that she would inappropriately touch the other residents.[17]

These are just a few of the stories captured by this study. They represent only a fraction of the total picture of LGBT youth in the system. As the first report of its kind, the information contained herein should be seen as a basis for further research and a unique first opportunity. As research and awareness of this topic grows, the momentous impact of abuse and neglect of LGBT youth in the system will only become more evident. The governmental departments charged with oversight of the juvenile justice system in New York State and New York City may take this initial report as a starting point from which to rectify the injustice visited upon LGBT youth in the system, taking action before the problem worsens.

Actions taken to make the system safer for LGBT youth need not be limited to New York alone. While the focus of this report is the juvenile justice system in New York, the issues faced by LGBT youth in the system and the recommendations for meeting their needs are not limited to the specific conditions of this region. While the culture and size of New York City may create an atmosphere in which more LGBT youth are open about their identities, other regions are aware of and attending to the needs of openly LGBT youth in their juvenile justice systems—including San Francisco, Washington, D.C., and Philadelphia.[18] Even those juvenile justice facilities unaware of openly LGBT residents undoubtedly have youth in their midst who are hiding or questioning their sexual orientation or gender identity and therefore will benefit from a supportive, non-hostile environment for all youth. Thus, as few models and insights into these issues exist nationally,[19] we wholeheartedly encourage policy makers and advocates in regions outside New York to take this report under advisement.

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[16] Anonymous youth, personal interview, January 2001.
[17] Anonymous youth, personal interview, January 2001.
[18] Kim Godfrey, administrator, Council for Juvenile Corrections Administrators, personal interview, 15 October 2000.
[19] Kim Godfrey, Administrator, Council for Juvenile Corrections Administrators, personal interview, 15 October 2000.

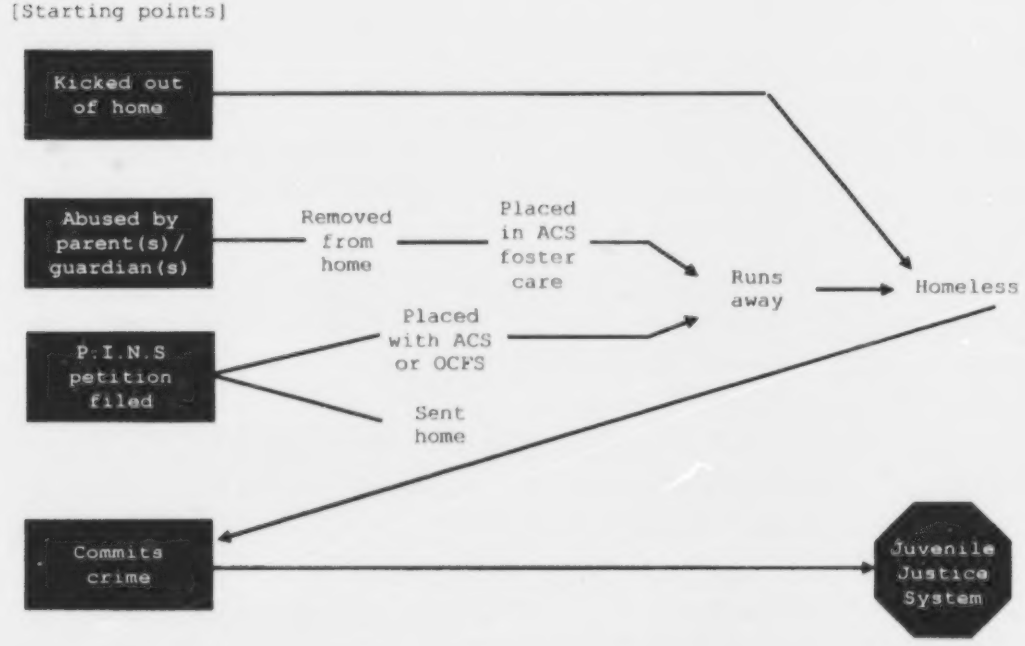
The recommendations at the end of this report are detailed and specific, covering a broad range of areas for change, in legal representation, judicial oversight and facility management. Yet the overriding tenet of the report can be stated simply: the juvenile justice system should not permit any youth to be mistreated due to her or his sexual orientation or gender identity. While many would argue that those youth placed in the system require punishment for their delinquent acts, one cannot legitimately contend that LGBT youth require greater punishment based on sexual orientation or gender identity bias. The system should mete out justice evenly and fairly and it should recognize the unique needs of LGBT youth just as it recognizes the needs of other minority populations within the system, including girls and those with mental health issues. If the system truly intends to treat all youth equally and meet their social service needs,[20] it must recognize the issues and needs facing LGBT youth and take steps to sufficiently address them.

[20] Sarina Roffe, Director of Public Affairs, New York City Department of Juvenile Justice, personal interview, 5 January 2001.

Entering the System

Due to the lack of research on LGBT youth in the juvenile justice system and the invisibility of LGBT youth within the system, as discussed below, it is impossible to precisely calculate the number of LGBT youth in the system at any given time. Beyond the estimate that four to 10 percent of the juvenile delinquency population identify as LGBT, concrete information does exist on the patterns of social and family problems, mental health issues, substance abuse, and subsequent displacement from the home that commonly forge the path of LGBT youth into the juvenile justice system.

Common paths into the system



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Social Stigma and Rejection

Social Problems

LGBT youth grow up in a society that is not only averse to non-heterosexual sexual orientations and variant gender identities, but is also resistant to any notion of youth sexuality.[21] Heterosexual images dominate a mass media riddled with gay-bashing jokes and epithets.[22] Everything from children's toys and clothing to playground taunting reinforce that girls should be "feminine" and boys should be "masculine."[23] The taboo of youth sexuality is evident from the resistance of many schools to providing adequate sex education and contraception, leaving youth at risk of teen pregnancy and the spread of sexually transmitted diseases.[24]

The damaging impact of this culture on LGBT youth is supported by statistics. While school should be a supportive and safe space for all children, it can be an extremely difficult setting for LGBT youth. Over 90 percent of LGBT youth report that they sometimes or frequently hear anti-gay slurs in their school and more than one-third said they heard such remarks from school faculty or staff.[25] Moreover, the 1999 Massachusetts State Youth Risk Behavior Survey of high school students found that LGBT students are more than twice as likely to report having been in a fight at school in the previous year (31.5 percent of LGBT students versus 12.9 percent of heterosexual students) and three times more likely to report having been injured or threatened with a weapon at school in the past year (23.5 percent of LGBT students versus 7.8 percent of heterosexual students).[26] LGBT youth are more likely than heterosexual youth to skip school because they feel unsafe (19.1 percent of LGBT students versus 5.6 percent of

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[21] Joseph A. Weber and Kay Murphy, "Adolescent Sexuality," Oklahoma Cooperative Extension Service web site <http://agweb.okstate.edu/pearl/fcl/family/t-2360.pdf>.

[22] For more information on homophobia and the media, visit the Gay & Lesbian Alliance Against Defamation web site <http://www.glaad.org>.

[23] Debra W. Haffner, "Facing Facts: Sexual Health for American Adolescents," *Human Development and Family Life Bulletin* 4 (1999).

[24] Haffner, "Finding Facts."

[25] *Youth Speak: GLSEN's School Climate Survey* (Gay/Lesbian/Straight Education Network, 1999). In New York City, 63 percent of adult gay men and 48 percent of lesbians report having been victims of anti-gay slurs or threats. "Exclusive Poll: They're Here, They're Queer, We're Used To It," *New York Magazine*, 5 March 2001: 30.

[26] *Massachusetts State Youth Risk Behavior Survey* (Massachusetts Department of Education HIV/AIDS Program, 1999) <http://www.doe.mass.edu/lss/yrbs99/>.

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heterosexual students).[27] Accordingly, LGBT youth are 4.9 times more likely than heterosexual youth to have missed school within a 30-day period.[28]

Family Problems

The social problems experienced by many LGBT youth often crystallize in the home. While supportive parents can often provide a safe haven for LGBT youth having difficulty with peers or at school, many parents reject their LGBT children altogether. For instance, one study found that 45 percent of parents were angry, sick or disgusted when first learning of their children's homosexuality,[29] while another study noted that approximately 26 percent of LGBT youth are forced to leave home due to conflicts over sexual orientation.[30] This lack of family support or even outright hostility can compound the problems LGBT youth face, causing feelings of isolation and fear and leading to substance abuse or suicide as forms of escape.[31]

Parents who are not supportive of their children or completely reject them enormously impact these youth. Attorneys interviewed for this report noted that while adequate parental involvement was lacking in most of their delinquency cases, the parental involvement in cases involving LGBT youth was particularly poor and absent. This absence was explained by one social worker as attributable to familial shame and embarrassment at having a gay son or a lesbian daughter.[32] As noted above, LGBT youth are less likely to have a parental figure willing to stand up for them in court.[33] "There is no parental involvement," reported one Legal Aid attorney.[34] As a Family Court judge explained, "If there's parental involvement we can send them home. We can parole them to an ATD [alternative to detention] program for eight hours a day... But if there's no one to give them to, we have to put them in detention."[35] Lack of familial acceptance and support for a youth based upon her or his LGBT identity has further resonance in

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[27] *Massachusetts State Youth Risk Behavior Survey*.
[28] *Massachusetts State Youth Risk Behavior Survey*.
[29] Sonia Renee Martin, "A Child's Right to be Gay: Addressing the Emotional Maltreatment of Queer Youth," *Hastings Law Journal* 48 (1996): 167.
[30] *Anti-Gay/Lesbian Victimization* (National Gay and Lesbian Task Force, 1984). Gary Remafedi, "Male Homosexuality: The Adolescent Perspective," *Pediatrics* 79 (1987): 326-330.
[31] *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators and School Personnel* (American Psychological Association, n.d.)
[32] Anonymous social worker, Legal Aid Society Juvenile Rights Division, personal interview, 16 November 2000.
[33] Gerald Mallon, Ph.D., personal interview, 25 October 2000.
[34] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 16 November 2000.
[35] Anonymous judge, New York City Family Court, personal interview, 20 November 2000.

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different cultural and religious contexts, an important consideration that is often overlooked. One Legal Aid attorney gave an example of devoutly Catholic, Puerto Rican parents, coming from a culture with entrenched religious and cultural notions of masculinity with little public acknowledgment of homosexuality, who may be particularly unaccepting of a gay son.[36]

Mental Health Problems

Many LGBT youth who are harassed or rejected by peers and/or family members develop serious mental health problems, stemming from severe self-esteem issues and feelings of isolation. One study found that LGBT youth are two to three times more likely to attempt suicide compared with other youth and constitute 30 percent of all completed suicides in the United States.[37] The United States Department of Health and Human Services reported in 1981 that 53 percent of "transsexual" youth had attempted suicide at least once,[38] and a study by the Massachusetts Department of Public Health found that 40 percent of gay, lesbian and bisexual high school students attempted suicide in 1997, compared to 10 percent of their heterosexual counterparts.[39] These numbers are staggeringly disproportionate to estimates of the percentage of LGBT youth in the population. These mental health problems can lead to feelings of isolation—which are reported by 80 percent of lesbian, gay and bisexual youth[40]—or even severe physical problems, such as eating disorders.[41]

In Massachusetts, 40 percent of gay, lesbian and bisexual high school students attempted suicide in 1997.

Substance Abuse and Rebellion

Attendant to mental health problems is evidence that LGBT youth abuse alcohol and controlled substances with alarming frequency. Researchers estimate that as many as 60

[36] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 16 November 2000.
[37] Martin, "A Child's Right to be Gay" 167.
[38] *Youth Suicide Study* (Department of Health and Human Services, 1981).
[39] Patrick Healy, "Massachusetts Study Shows High Suicide Rate for Gay Students," *Boston Globe* 28 February 2001.
[40] E.S. Hetrick and A.D. Martin, "Developmental Issues and Their Resolution for Gay and Lesbian Adolescence," *Journal of Homosexuality* 14 (1987): 25-43.
[41] *Secret Obsessions: Anorexia and Bulimia* <http://www.counseling.org/cnews/volume_1/0113c.htm>.

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percent of gay and bisexual boys are substance abusers,[42] compared to less than five percent of the general population and less than four percent of the youth population as a whole.[43] These higher rates stem from the family and social problems noted above. Additionally, LGBT youth experiencing social or family isolation or rejection may act out and exhibit behavior problems, becoming aggressive and angry and potentially engaging in delinquent activity.

Departure from Home

While, as noted above, many families are supportive of their LGBT children, many are not, and this rejection often results in the children being forced to leave home. An LGBT youth may become involved in delinquent activity, including substance abuse and rebellious behavior, as a direct reaction to problems at home or at school; however, our research suggests that delinquent behavior by LGBT youth is more commonly precipitated by some form of departure from the home, leading eventually to homelessness and commission of crimes necessary for survival on the street.

Foster Care

A parent who is angry about or disgusted by a child's sexual orientation or gender identity may abuse or mistreat the child.[44] For instance, one transgendered girl, upon arriving from Puerto Rico at age eight to meet her mother for the first time, was quickly rejected by her mother and severely beaten by her stepfather because of her gender identity. Within four days of her arrival, the girl was removed from her home by the state.[45] As this example illustrates, upon a finding of abuse or neglect, government agencies can intervene and remove children from their homes.

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[42] Gary Remafedi, "Adolescent Homosexuality: Psychological and Medical Implications," *Pediatrics* 79 (1987): 331-37.

[43] *1999 National Household Survey on Drug Abuse (NHSDA)* (Substance Abuse and Mental Health Administration, 1999) <http://www.drugabusestatistics.samhsa.gov/>. Generally, gay men and lesbians are two to three times more likely than other adults to abuse drugs or alcohol. D.J. McKirnan and P.L. Peterson, "Alcohol and Drug Use Among Homosexual Men and Women: Epidemiology and Population Characteristics," *Addictive Behaviors* 14 (1989) 545-553.

[44] *Improving Services for Gay and Lesbian Youth in NYC's Child Welfare System: A Task Force Report*, (Joint Task Force of New York City's Child Welfare Administration and the Council of Family and Child Caring Agencies, 1994).

[45] Anonymous youth, personal interview, January 2001.

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Youth removed by the State, under the auspices of the Administration for Children's Services (ACS) in New York City, are placed in foster homes or group homes. The underlying rationale for placing a youth in care is that such a placement will provide the child with the safety and care that was lacking in the abusive or neglectful home from which she or he was removed. Yet one study found that a staggering 78 percent of LGBT youth were removed from or ran away from foster care placements because such placements were un-welcoming or even hostile toward their sexual orientation or gender identity.[46] One hundred percent of LGBT youth in ACS group homes reported that they were verbally harassed while at a group home and 70 percent reported that they were victims of physical violence due to their sexual identity.[47] An attorney in the juvenile justice system cited one case in which a gay client was placed in a fundamentalist Christian foster home, where the family condemned the youth's sexual orientation, prompting the youth to run away.[48] LGBT youth in foster care frequently leave their placements and become homeless, adding to the problems with which they entered the system. Moreover, research shows that youth in group homes are more likely than other youth to be detained on criminal charges.[49]

Persons In Need of Supervision

LGBT youth can also be forced to leave home if a parent files a Persons in Need of Supervision (PINS) petition, asking the State to step in and assume some level of responsibility for the youth. The New York Family Court Act §712 defines a PINS as a youth under the age of 16 who either does not attend school or is incorrigible, ungovernable or habitually disobedient and beyond the parent's control.[50] Thus, actions that would not constitute crimes if committed by those over 16 can still be grounds for a PINS petition. While attorneys have handled cases where a parent's disapproval of a youth's sexual orientation was grounds for a PINS petition,[51] in 1985, a Richmond

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[46] *Improving Services for Gay and Lesbian Youth in NYC's Child Welfare System.*

[47] *Improving Services for Gay and Lesbian Youth in NYC's Child Welfare System.* Based on reported abuses and mistreatment of LGBT youth in the New York foster care system, the Lesbian and Gay Rights Project of the Urban Justice Center filed a class action lawsuit that is still pending. Joel A., et al. v. Giuliani, et al., No. 99 Civ. 0326 (SD NY 1999).

[48] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 16 November 2000.

[49] Molly Armstrong, "Connection Between Foster Care and Delinquency," *Vera Institute Newsletter* (New York: Vera Institute, 1997) <http://www.vera.org/newsletter/1997/overlap.html>.

[50] NY Fam. Ct. Act §712 (a). In November 2001, the PINS cut-off age will be raised to 18 from 16.

[51] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 15 November 2001.

County, New York, Family Court case with this basis was dismissed.[52] Still, LGBT youth may be at a greater risk for PINS filings. As noted, LGBT youth are more likely to skip school—grounds for a PINS petition—and much of the substance abuse, depression or generally rebellious behavior of LGBT youth facing family or social rejection may lead to "incorrigible" or "disobedient" behavior. A former attorney with Legal Aid and ACS observes, "Parents bring kids in when they can't deal with them. Any notion that a kid might be having sex is weird for parents,"[53] especially if it is non-heterosexual sex. This fear may be substantial even when the LGBT youth is not actually engaging in sex.

Often the parent(s) disapproval of the youth's sexual orientation is at the heart of the PINS petition, albeit covertly. For instance, one judge referenced a case where the mother filed a PINS petition because her son wasn't going to school. The boy was gay and was being taunted at school, and the mother resented the reasons for her son's truancy more than the fact of his absence.[54] One youth had been removed from his home on a PINS petition alleging he attacked his mother, but the root of the conflict was her hostility toward his sexual orientation.[55]

Youth against whom PINS petitions have been filed may be placed outside the home in facilities contracted by ACS or the New York State Office of Children and Family Services (OCFS), the latter agency having jurisdiction over juvenile delinquency placements as well. When sexual orientation or gender identity is the root—either overtly or implicitly—of the PINS petition, removing LGBT youth from their homes and placing them in often more restrictive settings in effect criminalizes their orientations and identities. As noted above, youth in PINS placements may be abused or ostracized and thus leave and become homeless, or they may rebel by engaging in delinquent behavior.

Homelessness

A major consequence of the factors discussed above is that LGBT youth face a high risk of becoming homeless, either as a direct result of being rejected by their families or from having left foster care or PINS placements. One study found that nearly half of bisexual

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[52] In the Matter of Lori M., 496 NYS2d 940 (Fam. Ct. Richmond Co. 1985).
[53] Colleen A. Sullivan, Staff Attorney, Lambda Legal Defense and Education Fund, personal interview, 2 November 2000.
[54] Anonymous judge, New York City Family Court, personal interview, 20 November 2000.
[55] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 15 November 2000.

and gay young men had run away from home at least once.[56] Nationally, as few as 25 percent[57] and as many as 40 percent[58] of homeless youth are thought to be LGBT. Such figures are estimated to be even higher in New York City.[59] Homelessness merely compounds the problems facing LGBT youth. For instance, runaway youth, compared to youth who have not run away, commonly suffer from severe depression and low self-esteem and are three times more likely to experience major depression and conduct disorders.[60]

Delinquent Activity

Homeless youth generally are at greater risk of entering the juvenile justice system than youth with homes,[61] and LGBT youth are no exception. Verna Eggelston, Executive Director of the Hetrick Martin Institute, a social service agency for LGBT youth in New York City, estimates that while only three to four percent of the organization's entire client population has been involved with the juvenile justice system, 60 percent of participants in the agency's homeless outreach program have been in the system.[62]

One explanation for this disparity is the fact that LGBT youth who are homeless often commit "survival crimes" in order to provide for themselves while living on the street. A study by the Hetrick Martin Institute found that up to half of the gay and bisexual young men forced out of their homes due to sexual orientation engage in prostitution to support themselves.[63] Similarly, Eggelston reports that most of the Hetrick Martin Institute clients who are involved with the juvenile justice system get arrested because of prostitution, pimping or stealing, all of which have a survival component.[64] Additionally, youth who are homeless—including a disproportionate number of LGBT youth—appear

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[56] Remafedi, "Male Homosexuality" 326-330.
[57] Martin, "A Child's Right to be Gay" 167.
[58] Schaffner, "Violence and Female Delinquency" 40.
[59] Martin, "A Child's Right to be Gay" 167.
[60] Marjorie Robertson, *Homeless Youth on Their Own* (Alcohol Research Group, 1996).
[61] *Youth With Runaway, Throwaway and Homeless Experiences.*
[62] Verna Eggelston, Executive Director, Hetrick Martin Institute, personal interview, 1 February 2001.
[63] R.C. Savin-Williams, "Theoretical Perspectives Accounting for Adolescent Homosexuality," *Journal of Adolescent Health Care* 9 (1988) 95-104.
[64] Eggelston, personal interview.

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at risk of being charged with "false personation;" under this charge, a youth who lies about her or his age or place of residence when questioned by police can be arrested.[65]

Apart from the connection between homelessness and delinquency, LGBT youth may also commit crimes as a direct result of or in response to social and family problems. For instance, as noted above, LGBT youth are more likely to abuse alcohol and controlled substances, which is itself a crime and often leads to other crimes.[66] Additionally, the 1999 Massachusetts State Youth Risk Behavior Survey found that LGBT high school students are three times more likely to report carrying a weapon to school in the past month (21.5 percent of LGBT youth versus 6.5 percent of heterosexual youth).[67] Such retributive behavior may stem from the harassment and taunting that LGBT youth face at school, as noted above. Notably, there is evidence that anti-LGBT harassment and bullying may have been a in factor recent school shootings in Santee, California,[68] West Peducah, Kentucky,[69] and Littleton, Colorado,[70] and, in fact, the majority of school shootings in 1997 and 1998.[71]

By and large, LGBT youth are not delinquents. They're kids doing the best they can to survive.

- Legal Aid Attorney

However, the "survival crimes" that are most often associated with LGBT youth are generally non-violent in nature. As one judge explained, "[LGBT youth] don't tend to be

[65] Penal Law §190.23, enacted in May 1997, states that a person is guilty of false personation when, "after being informed of the consequences of such act, he or she knowingly misrepresents his or her actual name, date of birth or address to a police officer or a peace officer with the intent to prevent such [person] from ascertaining such information." "Matter of Travis S," *The New York Law Journal* 23 February 1999.
[66] *Drug Use and Delinquency*, Partnership for a Drug Free America Fact Sheet <http://www.drugfreeamerica.org/research/factsheets/factsheets.asp>.
[67] *Massachusetts State Youth Risk Behavior Survey*.
[68] Stephanie Chavez and Megan Garvey, "Santee School Shootings," *Los Angeles Times*, 11 March 2001: A1.
[69] Usha Lee McFarling, "APA Puzzled By Precise Cause of Teen Violence," *Knight Ridder Washington Bureau* 17 May 1999.
[70] Kevin Johnson and Larry Copeland, "Long Simmering Feud May Have Triggered Massacre," *USA Today* 22 April 1999: 1A.

cases crying out for placement. The youth tends to be of much more danger to himself than to others."[72] In sum, the crimes that LGBT youth commit are often directly tied to their emotional or physical needs stemming from rejection based on sexual orientation or gender identity. A homeless LGBT youth picked up by police for lying about her or his age poses a risk to herself or himself but is not dangerous to others. Similarly, an LGBT youth who is caught stealing or prostituting is not doing so to harm others but, rather, out of a need to survive. In examining LGBT youth in the juvenile justice system, it is often impossible to separate a youth's sexual orientation or gender identity from the delinquent behavior charged.

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LGBT youth who enter the juvenile justice system are unique in many ways, but their paths into the system are often strikingly similar. The evidence strongly suggests that expressions of homophobia in their homes, schools and social settings, and the resulting substance abuse, depression, homelessness and delinquent behavior, may make LGBT youth more likely to enter the juvenile justice system. The above information suggests that, at their point of entry into the system, LGBT youth have particular physical, emotional and psychological needs that they are struggling with which must be recognized and supported in a sensitive and accepting environment, as contrasted to the hostility and rejection they may have felt in the past. The above also suggests strategies for curbing recidivism among LGBT juvenile delinquents and preemptively treating those elements in their lives that lead to delinquent behavior.

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[71] Jessica Portner, "Homosexual Students: A Group Particularly Vulnerable to Suicide," *Education Week* 19 April 2000.

[72] Anonymous judge, New York City Family Court, personal interview, 20 November 2000

System Overview

The juvenile justice system

Arrest	Arraignment	Pre-trial	Fact finding	Disposition
Police officer makes arrest	Assigned counsel	Youth sent home or placed in DJJ secure or non-secure facility	Judge renders finding of delinquency	1. Conditional discharge 2. Probation 3. Adjournment in contemplation of discharge 4. Placement in OCFS facility

Arrest

When a youth is arrested in New York City, a police officer transports her or him to a precinct or to booking for arraignment.[7]

Arraignment

In all five boroughs of New York City, a Family Court judge will appoint an attorney if the youth cannot afford a attorney. The attorney is usually from the Juvenile Rights Division of Legal Aid. A paralegal is often the first person to meet with the youth. The paralegal will record the facts of the case in the youth's file and then pass it onto the attorney.

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During the arraignment process the judge reviews the reason for the current arrest as well as any past arrest record to determine the next step for the youth. Parental presence, as well as information on school attendance and grades, will often influence the judge's decision. Thus, a youth who is estranged from his or her family or performs poorly in school—both of which are more likely for LGBT youth—face a disadvantage in the arraignment process.

If the youth is between the ages of 7 and 15, he or she is considered an accused Juvenile Delinquent (JD). JD cases are reviewed in Family Court. While awaiting trial, a JD is either remanded to his or her parent's custody, perhaps with required attendance at an Alternatives to Detention (ATD) school, or placed at a facility run by the New York City Department of Juvenile Justice (DJJ).

If the youth who is arrested is between the ages of 13 and 15 and has committed a crime that has been designated as serious, such as rape or murder, she or he is considered an accused Juvenile Offender (JO). JO's are tried in Supreme Court or Criminal Court; however, the judge can opt to change a JO's status to JD status. JO's, like JD's, are held in DJJ facilities while awaiting trial.

JD's and JO's placed in DJJ facilities are held either in secure or non-secure residences.[74] A secure detention facility is for youth accused of more serious crimes such as arson or rape. Secure detention facilities have locks on the doors and other restrictive hardware to restrict the youths' movements. A non-secure detention facility is generally for youth who need to be removed from their homes but do not require such a restrictive environment due to the nature of their crime. Non-secure detention facilities do not have locks on their doors and the residents are able to leave the facility if escorted by a staff member.

If a youth is between the age of 16 and 19, he or she is considered an adult and is housed on Riker's Island. There are separate youth units for boys and girls on Riker's Island.

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[73] All background information for the System Overview, except where otherwise noted, was obtained from *Your Guide to The Court System* (Youth Force, Inc. 1992). Please see the glossary for definitions of terminology.

[74] The average length of stay for JD's in DJJ facilities is 21 days in secure detention and 34 days in non-secure detention. JO's spend an average of 89 days in secure detention. Information from Department of Juvenile Justice web site <http://www.ci.nyc.ny.us/djj/>.

Disposition

If at trial the charges against the youth are found to be true, the Court has four disposition or sentencing options—adjournment in contemplation of dismissal, conditional discharge, probation and placement.

A youth with a parental or familial support network has a greater chance of receiving one of the three non-placement dispositions mentioned above. Conversely, if a youth is "placed," he or she is sent to a facility run by OCFS. JD's, JO's and a few PINS are all placed in OCFS facilities.

OCFS manages three different types of facilities throughout New York State: secure, limited secure, and non-secure. Each provides a different level of security and services. Some are run by private profit and non-profit agencies contracted by OCFS.[75] Every OCFS facility has the right to refuse any youth's placement in that facility.

The most restrictive level of custody is secure detention, which usually houses JO's or JD's with an extensive history of involvement in the juvenile justice system or who have committed particularly serious crimes. A limited secure facility is less restrictive and is for JD's who commit less violent crimes and for some youth who were previously placed in secure facilities and are transitioning back into the community. Finally, a non-secure facility is the least restrictive and consists of a range of residential facilities such as group homes. Youth who are placed in non-secure settings are believed not to pose a security risk to the community.

Youth between the ages of 16 and 19 can be sentenced as adults and incarcerated in adult prisons or can be sentenced under the Youthful Offender Procedure. This procedure allows the youth to avoid having a criminal conviction but may still result in placement in an adult facility.

[75] *The New York State Division for Youth: An Overview* (Division for Youth, 1992) 2.

Post-Disposition

While the judge determines sentence length, OCFS has the discretion to release a youth before the sentence is over. OCFS also has the discretion to petition the court to extend a youth's placement until the youth is 21 years old. This determination is made based on the youth's behavior while in placement. When a youth is released from an OCFS facility, he or she is placed in an after-care program, which is similar to adult parole. A youth will be required to follow the rules and regulations outlined by the after-care provider after release.

Findings

Based on the above discussion of the juvenile justice system and the ways LGBT youth generally enter it, our research led us to identify the following issues as the major difficulties that LGBT youth confront in the New York juvenile justice system:

1. There is a lack of awareness about the existence of LGBT youth and their needs;
2. There is a scarcity of sentencing options appropriate for LGBT youth;
3. The safety of detained LGBT youth is in jeopardy;
4. Professionals who work with LGBT youth lack expertise and training;
5. Policies governing how to handle issues relating to sexual orientation and gender identity are non-existent, and general policies are inconsistent in application;
6. There is a lack of services that are sensitive to the needs of LGBT youth.

While these findings apply to all parts of the system, there was an overwhelming consensus among those with whom we spoke that the detention facilities in which youth are placed are by far the least supportive parts of the juvenile justice system. In the words of a special litigation attorney at the Juvenile Rights Division of the Legal Aid

Society, "The facilities are the worst part of the system—the only part where *no one* is looking out for our kids."[76]

Lack of Awareness

Lack of Scholarly Research

Our research showed that there is a general and widespread lack of investigation throughout the system about LGBT youth and their specific needs. This is evidenced by the fact that very little research has been conducted on this population. While we found studies on both the experiences and development of LGBT youth[77] and the conditions and implications of the juvenile justice system,[78] in our extensive literature review we did not find one concrete study that systematically studies the intersection of these issues and examines their ramifications.[79] Some researchers have studied the experiences of LGBT youth in the child welfare system and these studies have some implications for and overlap with the topic of this study, as discussed above. However, the experiences of LGBT youth in the juvenile justice system are separate, with distinct circumstances that affect the youth and their treatment by the adults and the other youth around them. Prior to this report, these issues and experiences have gone unexamined.

Invisibility within the System

Additional evidence of the lack of attention this largely "invisible" population receives is that the majority of our interviewees said that they had not previously thought about this issue. For instance, while some attorneys interviewed for this report estimated that LGBT youth comprise 4 to 10 percent of the juvenile justice system population, the

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[76] Nancy Rosenbloom, Attorney, Legal Aid Society Juvenile Rights Division, personal interview, 12 December 2000

[77] Mallon, *Let's Get this Straight*. Remafaldi, "Male Homosexuality."

[78] Stacey Gurian-Sherman, "Back to the Future: Returning Treatment to Juvenile Justice," *Criminal Justice* 3 (2000) 30. *Beyond the Walls: Improving Conditions of Confinement for Youth in Custody* (United States Department of Justice Office of Juvenile Justice and Delinquency Prevention, 1998).

[79] The articles that do address LGBT youth in the juvenile justice system often do so in a brief subsection as part of a larger analysis of girls in the system or mental health issues, e.g., Schaffner, "Violence and Female Delinquency." While certain studies have addressed LGBT youth in the juvenile justice, Sullivan, "Kids, Courts and Queers: Lesbian and Gay Youth and the Juvenile Justice and Foster Care Systems," *Law and Sexuality: A Review of Lesbian and Gay Issues* 1 (1996), or LGBT incarceration issues generally, Darren Rosenblum, "'Trapped' in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism," *Michigan*

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majority of the attorneys were uncomfortable providing an estimate. Many had never given any thought to the fact that their clients might not all be heterosexual, and when called on to do so, could only base their estimates on stereotypes and assumptions, such as a boy speaking with a softer voice.[80] Similarly, a social worker at an OCFS facility firmly stated that there was only one gay youth in placement there, when conversations with youth at the facility revealed that there were at least five openly LGBT youth at the residence.[81]

Youth who are identified as LGBT by their attorneys, social workers and juvenile detention counselors are often classified as such because of their appearance or mannerisms. Boys wearing make-up or girls' clothes are easily labeled as gay or transgendered. Boys are also thought to be gay if they exhibit "effeminate" mannerisms. Since "tomboy" behavior is generally more widespread and accepted in girls, masculinity must be more extreme to be labeled as evidence of lesbianism. It follows then that LGBT youth who do not fit into the common stereotypes can easily go undiscovered and their needs can be overlooked by even the most well-meaning service providers. Notably, most of the people we interviewed expressed an attitude that gay, bisexual or transgendered boys are much more visible and thus problematic within the system, while lesbian, bisexual or transgendered girls can easily be overlooked and thus their issues and needs ignored.

Misperceptions About LGBT Youth

Those who work with LGBT clients throughout the juvenile justice system often associated LGBT youth with sexual offenders (youth that were brought into the system for sexual assault against another youth). This association, based on prejudicial and scientifically dispelled links between gay men and pedophilia,[82] is grounded in ignorance and can translate into differential treatment. When asked to talk about LGBT clients with whom he had dealt, one Legal Aid attorney cited his male clients who had been charged with molesting other boys, despite the fact that those clients were not necessarily gay.[83]

Journal of Gender and the Law 6 (2000) 499, this report is the first of its kind to exclusively and systematically research the experiences of LGBT youth in the juvenile justice system.

[80] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 16 November 2000.

[81] Anonymous social worker, OCFS facility, personal interview, 1 December 2000.

[82] *Facts About Homosexuality and Child Molestation*, Sexual Orientation Science, Education and Policy Web Site <http://psychology.ucdavis.edu/rainbow/html/facts_molestation.html>.

[83] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 12 December 2001.

Another attorney recounted representing a girl who sexually abused another girl: "Everyone thought she was gay. She wouldn't admit it... But it was the focus of the case."[84] This misassociation is widespread, despite the fact that such behavior does not necessarily entail a non-heterosexual identity, and moreover, there is no correlation between sexual orientation and child molestation.[85] Yet one transgendered girl tells of being assigned sex offender status at an OCFS facility, even though she was placed at the facility due to a robbery offense.[86]

Scarcity of Sentencing Options

According to several of the judges and attorneys interviewed, there are limited options available for the placement of LGBT youth based on perceptions and experiences that existing placement options are not safe for these youth. A judge's concern about the placement of LGBT youth is not easily remedied. Explained one judge, "If [placement] does become a real issue to the kids then we will need to decide what to do... [but] there are no options."[87]

Non-Placement Options

Judges suggested that, to the extent possible, they may try to avoid placing LGBT youth due to concerns for their safety and well-being. However, since, as noted above, the offenses many LGBT youth commit are survival crimes, unless non-placement services prove effective, LGBT youth are likely to become repeat offenders and thus, at some point, be placed. [88] Notably, the most popular option for LGBT youth, cited by judges, lawyers and social workers, is the Hetrick Martin Institute, whose school has a three-year wait list.[89]

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[84] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 16 November 2000.
[85] Jenny Carole, et al., "Are Children at Risk for Sexual Abuse by Homosexuals?," *Pediatrics* 94 (1994). David Newton, "Homosexual Behavior and Child Molestation: A Review of the Evidence," *Adolescence* 13 (1978): 40.
[86] Anonymous youth, personal interview, January 2001.
[87] Anonymous judge, New York City Family Court, personal interview, 20 November 2000
[88] Anonymous judge, New York City Family Court, personal interview, 20 November 2000. Anonymous judge, New York City Family Court, personal interview, 7 December 2000
[89] Eggelston, personal interview.

Protective Custody

To compensate for the lack of placement options and to ensure the safety of the youth in a secure facility, a judge may order that the youth be placed in protective custody, for example in the facility's infirmary or solitary lockdown in the special housing unit. In these cases, protective custody is provided because judges are concerned for the safety of the youth.[90]

There are, however, cases in which youth, against their will, are placed in protective custody by facility staff for reasons other than their safety, for instance alleging that the youth will sexually harass or engage in sexual activity with other youth.[91] LGBT youth tell stories of being placed in protective custody pursuant to this justification.[92] One transgendered youth who spent three weeks in a DJJ facility was placed in the infirmary, despite the fact that she insisted consistently that she wanted to remain in the general population like everyone else. The same youth has been living in the observation room at an OCFS facility for three months as of January 2001, whereas other residents spend at most one week in observation.[93] In formalizing its policies for transgendered as well as lesbian, gay and bisexual youth, moving away from a highly discretionary approach, the Philadelphia DJJ has largely adopted a protective custody model, placing transgendered youth and "overtly gay" youth in a special unit apart from the main population.[94] The argument for doing so is based primarily on safety, but also the agency's message that it "doesn't condone any sexual behavior,"[95] alluding to an erroneous belief that if LGBT youth were placed with the general detention population, they would automatically engage in sexual behavior.

> The message isolation sends to them about their sexuality is devastating.
>
> - Colleen Sullivan

In the adult correctional context, inmates are separated from the main population based on a risk classification system; transgendered prisoners and "flamboyant" gay men are

[90] Migdalia Cortes, New York City Department of Juvenile Justice, personal interview, 5 January 2001
[91] Akin Fadeyi, Administrator, Philadelphia Department of Juvenile Justice, telephone interview, 21 November 2000.
[92] Anonymous youth, personal interview, January 2001.
[93] Anonymous youth, personal interview, January 2001.
[94] Fadeyi, telephone interview.
[95] Fadeyi, telephone interview.

commonly isolated from the rest of the prison population, along with child rapists and other inmates who are considered "deviant."[96] The stated reason for the separation is safety: such at-risk prisoners are considered likely to be victims of violence if housed with the general population.[97] However, the extent to which protective custody should be utilized for LGBT youth in the juvenile justice system is debatable. Notably, inmates in the New York City adult correctional system on Riker's Island are housed in a dormitory-style facility, with unfettered interaction between inmates throughout the day and night. Yet youth at DJJ detention facilities and certain secure OCFS facilities sleep in individual, locked rooms at night. Thus the safety rationales for segregating LGBT youth are to some extent reduced and may allow for other solutions.

Due to a lack of options, LGBT youth are often placed in more restrictive settings than their crimes warrant.

The judges we spoke to expressed ambivalence about whether separation is the correct decision. "It's difficult," explained one judge who has heard cases involving LGBT youth, "There aren't many options at all. On the one hand you don't want to further segregate a child [by placing him or her in the infirmary]. So, do you reinforce segregation? I don't know. I don't have the feedback from the kids. I don't know how they feel, how they've been treated. I usually don't see them again."[98] In cases where it appeared necessary to remove youth from the general population, judges expressed a strict sense of responsibility to the youth to make sure that this move is what he or she wanted. In one instance, the judge took the time to discuss options with the youth and ruled on placement based on the youth's opinion.[99]

[96] Michael Jacobson, Professor, John Jay College of Criminal Justice, personal interview, 1 November 2000.
[97] Jacobson, personal interview.
[98] Anonymous judge, New York City Family Court, personal interview, 20 November 2000.
[99] Anonymous judge, New York City Family Court, personal interview,7 December 2000.

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Placement in More Restrictive Setting

Concern for the safety of an LGBT youth in a non-secure facility may result in judges feeling that they have no other choice but to place the youth in a more closely supervised, limited-secure facility. This means that LGBT youth can be placed in a more restrictive setting for reasons other than the severity of the crime committed or danger to the community, and as a result, are punished for their sexual identity because judges have no other recourse.[100] For instance, one youth who was verbally and physically abused by staff at a limited-secure OCFS facility was moved to a more restrictive setting.[101] His lawyer recounted, "I remember this youngster crying about having to go...to a secure facility."[102] Since many LGBT youth are in detention due to non-violent crimes, as noted above, the majority of LGBT youth would be eligible for placement in non-secure facilities, such as group homes. However, some are sent to more secure and restrictive facilities allegedly for their protection.

These two options—segregation and more restrictive settings—are not viable long-term solutions but only short-term band-aids for larger problems of neglecting LGBT youth in detention. While the former solution stigmatizes LGBT youth by treating them as if they have a disease, the latter, in effect, criminalizes non-heterosexual behaviors and identities.

LGBT-Only Facilities

There are currently no LGBT-specific facilities or sub-facilities (e.g., cottages or units) either within DJJ or at the secure or limited-secure levels within OCFS. There is one contract-agency facility that sometimes is available to youth who are eligible for placement in a non-secure facility. The Gramercy Residence of Green Chimneys Children's Services is currently the only group home in New York State (and the only such facility in the entire Eastern United States) that is tailored to meet the needs of gay, bisexual, transgendered and questioning males.[103] The Gramercy Residence of Green

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[100] Anonymous judge, New York City Family Court, personal interview, 20 November 2000. Mallon, personal interview.
[101] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 15 November 2000.
[102] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 15 November 2000.
[103] At this time, there is no corresponding facility for lesbian, bisexual, transgendered or questioning females. Several such facilities are currently being planned by ACS, but it remains unclear whether these facilities will accept OCFS detainees.

Chimneys is located in the borough of Manhattan and is home to 25 residents, ages 16 to 21, who receive LGBT-sensitive counseling and social services from supportive and highly trained staff members. Many residents at Green Chimneys have experienced the sorts of sexual and gender identity-based problems with families, schools, substance abuse and depression discussed above, resulting in many cases in placement.[104] While an excellent resource, Green Chimneys mainly serves youth in the foster care system. It was not designed to meet the special needs of all LGBT youth who are wards of the city or state, including those sentenced to detention. Green Chimneys' resources are in high demand and strained as is, and only in rare circumstances does Green Chimneys accept youth from the juvenile justice system. As it is the only facility of its kind, Green Chimneys receives many more requests for placement than it can handle.[105]

Research has not been conducted on how LGBT youth fare in LGBT-only facilities, as compared to mainstream detention, either with the general population or segregated. The demand for Green Chimneys as well as the Hetrick Martin Institute's school suggest that, if nothing else, lawyers and judges believe these options to be desirable. Individually, LGBT youth are split on whether LGBT-only facilities are a good idea: some wish for a safe place where they can feel comfortable and not different from everyone else,[106] while others would rather be allowed to live in the general detention population and not be segregated from everyone else.[107] The difference is subtle and highly individualistic, but most youth we interviewed agreed that LGBT-only facilities should at least be an option that youth and their lawyers can opt for if desired.

Safety in Jeopardy

Verbal Harassment

Among the youth and adults we interviewed, all agreed that one of the most significant problems for LGBT youth in the juvenile justice system is verbal harassment by their peers. As one transgendered youth described her experience, "Most people [in here] are

[104] Information from Gramercy Residence at Green Chimneys web site <http://www.greenchimneys.org/programs/nyc/nyc.htm>.
[105] Mallon, personal interview.
[106] Anonymous youth, personal interview, January 2001.

stupid. They treat me like I'm not human. They call me 'faggot' and tell me I have no life."[108] She continued to relate how, at the limited-secure OCFS facility where she is currently placed, she is regularly verbally abused and taunted by the other residents. She said they treat her "like trash, like an animal."[109] Another young gay boy explained that when he first arrived at the facility where he is currently living, the other youth asked him if he was gay, teased him and told him not to act so "gay." The facility staff also used anti-LGBT slurs, calling the boy a "fag."[110] Another youth was called "queer" by OCFS facility staff, who threatened to "send him to the bathroom" with other boys, presumably for sexual taunting, if he continued to cross-dress and "act gay."[111]

Physical Harassment

Physical harassment is another problem for LGBT youth, though it was cited less often than other types of harassment. Administrators we spoke with connected open LGBT identity with concerns of violence, stating that LGBT residents in a DJJ-type setting would automatically be victimized.[112] According to one attorney, "The judges are aware of how a boy with painted nails and lipstick is going to fare in a facility...he's going to get his a-- kicked."[113] Many youth we interviewed were reluctant to tell stories of physical abuse, but suggested abuse has happened—to them and other LGBT youth they know. One gay boy who indicated he had been abused said that he had never told anyone, which suggests that these problems often go undetected.[114] In other cases, abuse is detected but ignored. One transgendered girl told of a situation in detention in which one boy hit her in the head while others pulled her hair. There were no staff people around, and so when she told a staff person of the incident, the staff person said there was nothing she could do.[115] Facility staff seems unaware of the risks posed to LGBT youth in detention and does not seem to be taking steps to monitor harassment nor address it adequately when it occurs. A youth who was being harassed by peers explained to his

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[107] Anonymous youth, personal interview, January 2001.
[108] Anonymous youth, personal interview, January 2001.
[109] Anonymous youth, personal interview, January 2001.
[110] Anonymous youth, personal interview, January 2001.
[111] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 15 November 2000.
[112] Fadeyi, telephone interview.
[113] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 9 November 2000.
[114] Anonymous youth, personal interview, January 2001.
[115] Anonymous youth, personal interview, January 2001.

attorney that the hardest part was that the staff was "standing by and letting it happen."[116] In other cases, the staff is the root of the problems. One attorney discussed a case where a gay client was hit and spat on by a staff member at a limited-secure OFCS facility.[117] According to the attorney, the youth "couldn't do anything about [the harassment] because they were staff."[118]

Not "Fitting In"

In addition to overt displays of discrimination, invisibility and isolation were cited as problems for LGBT youth in the system. Just as LGBT adults in the general population may feel uncomfortable or unsafe being open about their sexual orientation or gender identity, LGBT youth in the juvenile justice system may feel similar constraints. In fact, such concerns about coming out may be even greater in the juvenile justice system, where fitting in with peers is necessary, especially since no other social or family support options exist. As noted above, LGBT youth may have experienced social or family rejection or fear such rejection and thus hide their identities. As one attorney explained, "Kids might hide [their sexual orientation or identity] because they know the consequences of being out. The vast majority of the kids who are LGBT wouldn't show it."[119] Moreover, especially for boys, acting tough, and therefore not effeminate or gay, is necessary for survival.

> This kid could handle himself with other kids, but if he was hit or spat on by staff... he couldn't handle it.
>
> - Legal Aid Attorney

When asked about the number of LGBT youth in the system, a social worker at the Legal Aid Society explained that the numbers "are probably higher than immediately apparent because kids want to fit in and keep their sexual identities to

[116] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 15 November 2000.
[117] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 15 November 2000.
[118] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 15 November 2000.
[119] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 11 November 2000.

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themselves. For kids in OCFS, it is a tough situation. Either they can't be who they are or they are targets of other kids—more than other [straight] kids—so they try to be like everyone else."[120] For example, according to one youth, there are boys at her facility who are gay but who are scared to come out in such a non-supportive environment. Her impression is that these boys go to great lengths to not seem gay by littering their conversations with misogynistic and homophobic remarks.[121] Such treatment in placement is especially problematic for transgendered and effeminate boys who are unable to hide their identities, more easily labeled gay, and thus ready targets for harassment.[122] LGBT youth who do not feel supported to be open about their sexual orientation or gender identity in the juvenile justice system may choose to hide their identities, yet concealing one's sexual or gender identity can have negative repercussions in terms of self-esteem and mental stability.[123] Thus, whether open or concealed, an LGBT youth's sexual orientation and/or gender identity causes problems within the context of the juvenile justice system.

Lack of Expertise and Training

Judges and Attorneys and Social Workers

By their own accounts, the professionals working with LGBT youth generally lack expertise and training in sexual orientation and gender identity issues. Those instances in which judges, attorneys and social workers were aware of these issues were primarily attributable to personal interest or random chance. Specifically, we spoke with several LGBT lawyers and judges who said they were aware of and sensitive to sexual orientation and gender identity issues due to their own experiences in life. Alternatively, many lawyers and social workers said they educated themselves when faced with LGBT clients. In neither case was their knowledge attributable to training or professional development. Those

> I don't know how to help.
>
> - Legal Aid Attorney

[120] Anonymous social worker, Legal Aid Society Juvenile Rights Division, personal interview, 3 November 2000.
[121] Anonymous youth, personal interview, January 2001.
[122] Dr. Richard Dudley, personal interview, 1 November 2000.

individuals without any personal commitment or professional exposure were more insensitive and unaware of the needs of LGBT youth. Yet even those individuals who did have some knowledge of and experience with LGBT youth said that they, in addition to their less informed peers, need more training.

Facility Staff

LGBT youth often cited staff as the cause of difficulties in detention, either because they harass LGBT youth or treat them unfavorably, or because they "turn their heads" and condone harassment by other youth. According to an OCFS official, "The problem may be staff. All you need is a high school diploma. Yesterday you worked at Walmart; today you are a childcare worker."[124] This comment implies that a strong training component is missing and that the credentials required to work with youth in the juvenile justice system are minimal.

According to the Department of Juvenile Justice website, the responsibilities of juvenile counselors include (among others):[125]

- The custody, direct care, supervision and counseling of juveniles in the custody of the agency.
- Supervision of juveniles to ensure maintenance of their safety and order in dormitories, corridors, dining rooms, recreation rooms, court detention rooms, hospitals and related facilities where their attendance is required.
- Assist in maintaining security of premises, conduct searches, guide and direct group activities, implement constructive programs, identify and report any unusual occurrences that may affect the general social atmosphere of the juveniles.

However, despite this apparent focus on safety, the DJJ environment does not feel safe to the many LGBT youth who are afraid to express their true identities for fear of being stigmatized or ostracized[126] or who are open about their identity and are abused.[127] Similarly, according to the Associate Commissioner of Programming at OCFS, "We want

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[123] Dudley, personal interview.
[124] Harith Flagg, Associate Commissioner, Division of Rehabilitative Services, New York State Office of Children and Family Services, telephone interview, 20 December 2000.
[125] Information from Department of Juvenile Justice web site <http://www.ci.nyc.ny.us/djj/>.
[126] Anonymous youth, personal interview, January 2000.

to foster a safe environment where no one feels harassed in any way."[128] However, this is not always the case; our research clearly indicates that, despite official pronouncements, staff and peers have been known to threaten the safety of LGBT youth.

Many attorneys and other people who work with the juvenile justice system cited training as a reason why facility staff is often not prepared to meet the needs of LGBT youth. Whereas adult correctional officers receive four to five months training,[129] DJJ facility staff receive only three weeks of training before they begin to work,[130] OCFS staff receives only five weeks of training,[131] and Family Court Probation officers are trained for only two to three weeks.[132] According to the DJJ officials with whom we spoke, the training for DJJ juvenile counselors includes training on "sexuality and intimacy."[133] The training, which is mandated by the state, was recently upgraded, according to these DJJ officials.[134] We spoke with a representative of the Probation Department who did not believe that LGBT issues are specifically covered in probation officer training; yet without any specific training, the Probation Department believes its officers to be well-versed in the resources available for LGBT youth.[135]

Training has been effective in other contexts. A Legal Aid social worker reported, "Within ACS, [being gay, lesbian, bisexual or transgendered] is more acceptable. [T]here have been efforts to sensitize staff in ACS. There have been no efforts to do this in the juvenile justice system."[136] One step in the right direction is that, according to the Associate Commissioner, OCFS is working with the Hetrick Martin Institute to train staff to respond effectively to the needs of these youth and to recommend and institute programming.

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[127] Anonymous youth, personal interview, January 2000.
[128] Flagg, telephone interview.
[129] Jacobson, personal interview.
[130] James Williams, Staff Trainer, New York City Department of Juvenile Justice, personal interview, 5 January 2001.
[131] Flagg, telephone interview.
[132] Jack Ryan, Public Information Director, New York City Department of Probation, personal interview, 12 December 2000.
[133] The Probation Department did not respond to our request for further information on the specific content of this training.
[134] Our requests for specific information on the DJJ training curriculum were not fulfilled.
[135] Ryan, personal interview.
[136] Anonymous social worker, Legal Aid Society Juvenile Rights Division, personal interview, 3 November 2000. The Hetrick Martin Institute is providing training for officials at OCFS; however the training is in the beginning stages and has only been conducted with the OCFS Senior Management staff.

One goal of such training is to change the institutional culture to make it more accepting of LGBT people. Yet one indicator that the culture is currently unaccepting is that OCFS and DJJ staff seem reluctant to "come out" or be open about their sexual identity at work, often more reluctant than the youth themselves. For instance, current and former OCFS facility social workers said that no one they know of has ever felt comfortable coming out at such facilities.[137] A supervisor at an ATD program reports the same culture within her organization.[138] A provider of social services for homeless and troubled youth explained, "even gay officers have to pretend they are homophobic because they don't want to lose their jobs."[139] If juvenile counselors are led to believe that they will lose their jobs if their identities are revealed, it is no surprise that they will treat the LGBT youth in their care in a harmful or unsupportive manner as a cover-up. This speaks to the fundamentally intolerant environment at certain facilities, even those that profess to be supportive of LGBT residents. Conversely, some facilities have taken affirmative steps to create an LGBT-supportive environment, recruiting openly LGBT staff and promoting them to positions of responsibility within the organization. These efforts have in part fostered an environment where LGBT residents can feel comfortable.[140]

Many of the professionals with whom we spoke suggested that staffing ratios might play a role in how effectively a juvenile justice institution attends to issues of sexual orientation and gender identity. For instance, a social worker in one OCFS-contracted diagnostic center noted that when problems arise with staff members behaving inappropriately with respect to LGBT youth—for instance, calling them names—she and her superiors are immediately aware of the situation and able to work closely with the problem-causing staff members to improve their behavior and change their attitudes due to a relatively high supervisor-to-staff ratio.[141] Similarly, former Department of Corrections Commissioner and former Probation Commissioner Michael Jacobson reasoned that a higher staff-to-inmate ratio (one to eight) results in fewer problems and a swift resolution of problems that do occur.[142] He argued, for instance, that the caseload

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[137] Anonymous social worker, OCFS facility, personal interview, 25 January 2001. Anonymous social worker, Legal Aid Society Juvenile Rights Division, personal interview, 15 November 2000.
[138] Ana Bermudez, Deputy Director for Youth Development, Center for Alternative Sentencing and Education Services, personal interview, 17 November 2000.
[139] Jennie Casciano, Director, New Neutral Zone, personal interview, 12 December 2000.
[140] Rose W. Washington, Executive Director, Berkshire Farm Center and Services for Youth, personal interview, 31 March 2001.
[141] Anonymous social worker, OCFS facility, personal interview, 25 January 2001.
[142] Jacobson, personal interview.

of Family Court Probation officers is much too high to focus intensively on the need of particular youth, and thus any uncommon concern or need, including sexual orientation or gender identity, is neglected.[143] In any setting, a low staff to youth ratio will not allow staff to adequately address any youth's particular needs, including monitoring those at risk of being harmed or seeking out supervisory assistance around particular issues.

Inconsistent or Non-Existent Policies

Lack of Specific Policies

DJJ and OCFS do not have policies that specifically guide treatment of LGBT youth in detention, so staff is allowed wide discretion in how to interpret and implement whatever general rules exist and apply them to LGBT residents. For example, none of the DJJ or OCFS administrators we spoke to had clearly defined policies for staff on how to treat transgendered girls or boys who want to cross-dress, an issue in facilities that do not require uniforms or have different uniforms for boys and girls. As an OCFS official illustrated, "We have no policies regarding cross-dressing. I am not sure what our response would be if a youth wanted to cross-dress."[144] The default seems to be enforcing "gender-appropriate" manners of dress.

Unequal Enforcement of General Policies

DJJ does have a policy of removing aggressive, violent youth from the group setting in order to protect other youth from harassment. However, this policy appears to be unevenly enforced; youth and others explained that facility staff sometimes places targeted LGBT youth in protective custody instead of removing the harassing youth. As noted earlier, youth report being isolated in the infirmary at DJJ facilities because staff was not dealing with harassment by other detainees.[145] Similarly, policies that punish the use of slang, by youth or staff, may not be enforced in cases of anti-LGBT slang, which is common and culturally acceptable and, in the absence of clear directives to staff, may not be looked on as worthy of punishment.

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[143] Jacobson, personal interview.
[144] Flagg, telephone interview.

> It's amazing what a boy in a skirt will do to adults.
>
> - Legal Aid Social Worker

Moreover, certain policies are enforced against LGBT youth even though such enforcement does not achieve the goals of the policy. For instance, a transgendered girl in one OCFS facility wishes to be called by her chosen, female name, yet staff calls her by her male name using as justification a policy meant to curb gang-related monikers.[146] This goal is not advanced by preventing the young girl from expressing her gender identity. In certain cases, general policies may be selectively enforced against LGBT youth as a way of punishing them. In one case, a lesbian in detention faced contraband charges for having an extra piece of paper in her room, a rigid application of the rules that staff did not enforce on other youth.[147]

Need for Services

There was some disagreement among our sources about the amount and quality of services that are available to youth in the system. Officials at the DJJ claimed that there are so many services available to all youth that the biggest challenge for administrators is tracking the services in order to ensure efficient use and prevent overlap. On the other hand, a Legal Aid social worker told us that there are "very few mental health/counseling services for any kids"[148] and, suggesting the problem is even worse for LGBT youth, a Family Court judge expressed with dismay that "there are really no services for these kids."[149] The services that are provided tend to compartmentalize sexual and gender identity, treating them as separate from other issues in a youth's life. Administrators and service providers we spoke to conceptualized sexual orientation and gender identity as issues to be dealt with separate from what they consider to be more important issues, such as mental health, substance abuse and family problems. DJJ officials reason that youth have more pressing problems that need attention and rank sexual orientation and gender

[145] Anonymous youth, personal interview, January 2001.
[146] Anonymous youth, personal interview, January 2001.
[147] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 15 November 2000.
[148] Anonymous social worker, Legal Aid Society Juvenile Rights Division, personal interview, 3 November 2000.
[149] Anonymous judge, New York City Family Court, personal interview, 20 November 2000.

identity issues as the lowest priority. For example, a DJJ official gave an example of an LGBT youth he was counseling:

> We never get to this point [discussing sexual orientation] with kids because there is so much going on and there is such a quick turn-around. There was a young man at Spofford[150] who admitted he was gay—was in for drugs and prostitution. His sexuality was far down on the list of issues to be addressed. My first line of attack was to deal with other priorities: prostitution, use and sale of drugs. [151]

This attitude does not take into consideration the national statistics on LGBT youth and suicide, substance abuse and depression, as discussed earlier. Such statistics clearly illustrate how sexual and gender identity play into and are affected by other issues—such as substance abuse and the commission of survival crimes—in the lives of youth. For instance, the mental health needs of an LGBT youth cannot effectively be separated from his or her sexual orientation or gender identity. Thus, a system that does not recognize the continuum of needs may negate any efforts to address a youth's mental health by creating or compounding problems that it is intended to resolve. Rather, these interconnections must be drawn on in the context of treatment or the patterns that lead to LGBT youth's involvement in the juvenile justice system will not be broken.

[150] The name of Spofford, a secure DJJ facility in Bronx, New York, has been changed to Bridges.
[151] Williams, personal interview.

Recommendations

The above findings reflect a lack of awareness in the juvenile justice system about LGBT youth and their needs, a lack of appropriate sentencing options, jeopardized safety, little expertise and training among juvenile justice professionals, inconsistent or non-existent policies and inadequate services. Based on these findings, the recommendations presented below are intended to help various players in the juvenile justice system to improve the treatment of LGBT youth. These recommendations are based on a systematic analysis of the concerns and suggestions of youth, their attorneys and social workers, family court judges, and other juvenile justice professionals.

Intervention and Decriminalization

Recommendations for Community Organizations and Policy Makers

A key way to resolve many of the problems noted above is to prevent LGBT youth from entering the juvenile justice system.

Increase prevention resources for at-risk LGBT youth

As explained earlier, the crimes that LGBT youth predominantly commit are survival crimes, stemming from situations of rejection and desperation. The family and social problems that LGBT youth face are often due to a lack of understanding on the part of parents, schools and peers. Increased outreach to and education of these groups regarding sexual orientation and gender identity diversity would promote increased acceptance of LGBT youth. Thus, community-based social service agencies dealing with family problems, mental health issues or substance abuse could prevent LGBT youth from ending up on the street.

For LGBT youth who do become homeless, resources should be funneled to these youth so they are not forced to resort to crime for survival. Fortunately, LGBT and LGBT-sensitive family and peer education and support programs, mental health and substance abuse treatment, and homeless shelters and resource centers do exist, but the vast majority are under-funded and under-resourced. Politicians and advocates at the state and city level should increase funds available for these organizations with an emphasis on prevention, rather than punishment or rehabilitation.

Decriminalize survival crimes

The crimes LGBT youth commit are often non-violent in nature. These crimes, including pimping, prostitution and stealing, are committed to provide money and resources necessary to sustain a life on the streets. Rather than harshly criminalizing these behaviors and forcing LGBT youth into the juvenile justice system, where abuse and other mistreatment will likely compound their problems and lead to recidivism, the system should focus on developing and promoting LGBT-sensitive alternatives to detention, again with an emphasis on prevention rather than punishment of what are situational crimes.

Representation

Recommendations for Attorneys

Develop and implement more training to help attorneys work with their LGBT clients

Legal Aid Society attorneys currently receive sparse, informal training about working with LGBT clients. This training must be expanded to help attorneys effectively represent LGBT youth. The training should include regular, formal training sessions with outside agencies that specialize in working with LGBT youth. Topics should include how to discuss sexual orientation and gender identity issues with clients; whether and

how to ask about a client's sexual orientation or gender identity if pertinent to the client's needs or the case; what words to use in order to be sensitive and respectful; and how to incorporate outside resources in working with LGBT clients. Trainings and workshops should be held for new and veteran attorneys alike.

Create a resource manual to help attorneys represent their LGBT clients and address their unique needs

An exhaustive resource manual for attorneys should be produced that includes information covered in the trainings, contact information for outside agencies and a copy of this report. The resource manual should also include information on LGBT-specific and LGBT-friendly placement options and programs. The manual should be updated regularly.

> I would love for someone to tell me what to do.
>
> - Legal Aid Attorney

In addition to the resource manual, a poster with hotline numbers and other resources should be created and hung in Legal Aid offices so that youth who may not feel comfortable discussing sexual orientation or gender identity issues with their attorneys can still access and benefit from available services. The posters may also be used to indicate an LGBT-supportive environment, which will help LGBT clients feel more comfortable. The creation of such a poster must be done in conjunction with more training, so that if attorneys or social workers are asked sexual orientation or gender identity questions generated by the posters, they can provide sensitive and well-informed answers and/or direct the youth to the correct resources.

Take a more active role in the placement of LGBT youth and advocating for more placement options

Our research found that there are few placement options where LGBT youth can feel safe. Attorneys should become active in advocating for more options and in monitoring their clients' experiences while in placement. This includes being aware of and tracking placement conditions of their LGBT clients, as these clients are particularly susceptible to

abuse while in placement. Attorneys could take on the monitoring role for clients of particular concern, or the role could be assigned to a social worker, a paralegal or another division of the agency, such as the Special Litigation Unit. Legal Aid and other advocate organizations could also solicit volunteers from the LGBT community to be involved with particular cases and stay connected with youth after they are placed.[152]

Adjudication

Recommendations for Judges

While most of the judges with whom we spoke are sensitive to the issues of LGBT youth and show an understanding and a desire to help the youth as much as possible, our research shows that many judges lack this awareness. In general, judges need to be more aware of placement options. Several judges requested that more training and resources on LGBT youth be provided.

Advocate for more placement options so that youth can be placed in appropriate environments

Just as we have recommended that attorneys take a more active role in advocating for more placement options, we also recommend that judges become involved in this advocacy. Judges can encourage such changes through the mandates of their rulings, for instance, requiring OCFS to ensure the safety of an LGBT youth in its care, ordering a facility to have sensitivity training for staff or ordering LGBT-sensitive counseling for a youth.

If a youth's safety is still a concern despite these measures, judges should ask LGBT youth if they want to be in protective custody.[153] The judge should never make such an order without consulting the youth and his or her attorney. Protective custody means being placed in the infirmary in most facilities, which the youth may not want. Some

[152] Regina Quattrochi, Executive Director, Bailey House, personal interview, 21 February 2001.
[153] Anonymous judge, New York City Family Court, personal interview, 7 December 2000.

LGBT youth may want to be placed in the general population and they should be able to do so, with the facility held to a strict order to monitor and guard the youth's safety.

Judges must also be firm with facilities about setting the terms of a youth's placement. For instance, if a transgendered girl does not want to have her long hair cut, the judge can prevent the facility from cutting her hair. Through mechanisms such as this, the judge can provide for the respectful treatment of the youth in placement.

> All I am asking for is that these kids be physically and emotionally safe in placement.
>
> - Legal Aid Attorney

Encourage and facilitate informal peer education and training for judges on LGBT issues

Education of judges, especially on potentially sensitive topics, is accomplished well via peer education.[154] One judge explained that judges tend to learn most from each other and are greatly influenced by their peers, so peer education would be the most powerful form of training, the easiest to introduce, as well as the most cost-effective.[155] All judges should be aware of the particular needs and issues facing LGBT youth as well as the services available to the youth.

Placement

Recommendations for Administrators and Staff

Develop more placement options for LGBT youth that appropriately reflect the severity of their offenses and are safe and secure

Our findings show that there is a scarcity of appropriate sentencing options to address the needs of LGBT youth. As stated above, LGBT youth face many unique issues and often

[154] Anonymous judge, New York City Family Court, personal interview, 20 November 2000.
[155] Anonymous judge, New York City Family Court, personal interview, 7 December 2000.

have particular needs that most agencies are not aware of or prepared to meet. To address this, we recommend more safe, non-hostile placement options for LGBT youth.

Due to limited placement options, judges and attorneys often attempt to place LGBT youth in non-secure facilities such as the Gramercy Residence of Green Chimneys because it is the only place specifically for LGBT youth. However, "...placement should be based on need, not orientation...and some of these youth need to be in secure facilities."[156]

On the other end of the spectrum, some LGBT youth may be placed in more restrictive, secure settings simply because the judges believe they will be safer due to closer staff supervision, even though the charged offenses do not warrant such a placement. Instead, the system should develop limited-secure and secure facilities based on models like Green Chimneys that respect the unique needs of LGBT youth.

In San Francisco, another model exists which has established a co-educational facility for youth who have committed very minor offenses, a solution that seems useful for this problem.[157] While not established specifically for LGBT youth, such a system would provide an appropriate option for a transgendered girl (who committed a non-violent crime) who might be forced to wear boys' clothing in another facility.

In addition to creating LGBT-specific facilities, OCFS and DJJ should gauge LGBT-sensitivity among existing programs and facilities. For instance, whereas some placement options are clearly hostile to having LGBT youth in their population, certain programs have taken measures to incorporate services for LGBT youth. Even those placement options without LGBT-specific programs or components may have developed the sensitivity to be open to such programs and could be urged and supported to develop such programs at OCFS and DJJ's behest.[158]

Until more LGBT or LGBT-sensitive facilities are created, a youth should be able to request placement in protective custody if he or she is fearful for his or her safety. Rather

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[156] Mallon, personal interview.
[157] Michael Baxter, Associate Director, Special Programs for Youth, San Francisco Heath Department, telephone interview, 5 February 2001.

than placing the youth in isolation in the infirmary, we recommend creating a separate area of the facility where vulnerable or at-risk residents can live as a group, such as a designated cottage or unit, similar to the group protective custody model adopted in Riker's Island.[159] Placing a youth in isolation in the infirmary, where other kids only go if they are sick, sends a damaging and stigmatizing message to LGBT youth. Thus, if the youth wishes to be placed in protective custody due to safety concerns, it is preferable that he or she still remains in a socialized setting.

Implement mandatory training throughout the facilities to educate staff on sensitivity issues, respecting differences and the specific needs of LGBT youth

Based on the finding that DJJ and OCFS facility staff lacks expertise and appropriate training in supervising LGBT youth, clear and mandatory training needs to be implemented in facilities on an ongoing basis. Continuous training, as well as case-by-case assistance, is necessary to address the problems LGBT youth face in the system. Dr. Gerald Mallon argues that these trainings need to encompass differences, "dialoging with people...[letting them know] that there are people here who are not like you."[160]

> They need staff who are like them and are familiar with their experiences and can provide treatment. At this point, we're happy if they're not abusive.
>
> - Legal Aid Attorney

Facility staff must be aware of and sensitive to the emotional stress faced by a young person who is either questioning his or her sexual orientation and gender identity or openly LGBT and dealing with discrimination and prejudice from family, peers and others. Training must educate staff not to presume heterosexuality. LGBT youth coming into the system must feel supported and respected for their individual differences and assured that the climate is open to them, but closed to harassment.

[158] Rose W. Washington, Executive Director, Berkshire Farm Center and Services for Youth, personal interview, 31 March 2001.
[159] Jacobson, personal interview, 1 November 2000.

In this process, it is important to remember that it is easy to write a policy, but much harder to make a change in an organization. One way to counter this issue would be to begin staff training with a small group of staff members and work with them to create their own curriculum. Also, focus groups with staff would help facility managers learn what staff's concerns related to this topic really are.[150]

Promote consistent and clear policies throughout DJJ and OCFS governing how to handle issues relating to sexual orientation and gender identity

Based on the fact that policies relating to LGBT youth are inconsistent or non-existent in facilities, youth and professionals have expressed a need to institute clear, fair and consistent policies relating to LGBT youth. As shown above, general policies are too often discriminatorily applied in the cases of LGBT youth. Specific policies, uniformly enforced, restrict the biases of individual staff people and can more easily be monitored and evaluated for effectiveness. Attorneys, judges, facility staff, and youth must be made aware of these policies so that individual situations are not handled haphazardly and in a discriminatory manner and so that standards are known, accepted, and adhered to.

Policies should include:

- Placement policies: If a biological boy wishes to display a feminine appearance, he should not be forced to conform to look like the other boys, nor should a girl be forced away from a masculine self-presentation. Any policies that would impinge on an LGBT youth's self-identity or expression should not be arbitrarily enforced but rather implemented in a fair and consistent manner. For instance, dress codes that would require a different uniform for boys versus girls should be scrutinized if being applied to a transgendered girl against her own self-identity. Conversely, LGBT youth should not be made to follow "rules" that heterosexual youth are not held to. For instance, if other youth aren't forced to wear certain hairstyles, than a lesbian detainee should not be prevented from cutting her hair short.

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[150] Mallon, personal interview, 25 October 2000.
[151] Ellen Schall, Professor, Robert F. Wagner Graduate School of Public Service at New York University, personal interview, 24 October 2000.

- Anti-discrimination policies: If another youth harasses an LGBT youth, either physically or verbally, the harassing youth should be reprimanded and/or disciplined, in accordance with the facility's code of conduct. Such codes of conduct should explicitly include anti-LGBT slurs, such as "faggot" and "dyke" as well as terms that are offensive in context, for instance calling a gay boy a "girl." This policy should be made clear at resident orientation and enforced consistently with zero tolerance for violations. "[It must] be clear that the environment doesn't support [discriminatory] behavior. There need to be clear rules and strict standards on how kids are being treated."[102]

- Reporting policies: Facilities should have a clear protocol for reporting anti-LGBT incidents by detainees and staff. Supervisors need to make sure that rules are followed and that these situations are managed appropriately. Incident reports should include the discriminatory nature of the incident so that these occurrences may be tracked and monitored.

- Monitoring subcontracted services policies: DJJ and OCFS out-source many juvenile justice services to private or non-profit agencies. Training around sensitivity to issues of difference and diversity, including sexual orientation and gender identity, should be mandated by the terms of such contracts. The contracting government agencies should provide LGBT-inclusive resources, such as those recommended herein, to the subcontracted organizations. Furthermore, youth in out-sourced programs or placements should be made aware of ways in which they can contact DJJ or OCFS officials if problems arise through clear, uniform grievance procedures.

Facilitate access to services and resources that address the needs of LGBT youth

[102] Mallon, personal interview.

There is a lack of resources and services available that are sensitive to the needs of LGBT youth. When we spoke with youth, they said that LGBT-sensitive counseling, support groups, and more supportive programming would be beneficial to them. There need to be more community-based organizations helping these youth, as well as increased utilization of these resources by DJJ and OCFS programs and facilities. The need for adequate services for LGBT youth is required both before and after a youth enters the system. Explained one attorney, "By the time that they reach us there are a limited number of things that we can do. There really needs to be more nonprofit groups out there providing preventative services for these kids."[163]

The Department of Juvenile Justice prides itself on "treating all kids the same."[164] Yet all youth in the system do not have the same needs. Just as the system has recently responded to the growing number and unique needs of pregnant girls,[165] LGBT youth have specific needs that must be addressed by a comprehensive social services program. Some recommendations to alleviate this deficiency are:

- Integrate sexual orientation and gender identity into the overall social services treatment of juveniles in placement.

- Begin peer education for detained youth about appreciating differences and being sensitive to all differences. They must learn that diversity encompasses not just race, ethnicity, gender, religion, etc., but also sexual orientation.[166]

- Provide each youth with a fact sheet listing resources, phone numbers, and names of individuals that can help them if they have questions or issues relating to sexual orientation and other issues. In San Francisco, youth are given a hotline number with other health education information in a packet of general information that they receive when they arrive.[167] DJJ and OCFS facilities could create an LGBT issues bulletin board that is prominently placed in the facilities

[163] Anonymous attorney, Legal Aid Society Juvenile Rights Division, personal interview, 16 November 2000.
[164] Roffe, personal interview.
[165] Liz Russo, Director, Program Services, New York City Department of Juvenile Justice, personal interview, 5 January 2001.
[166] Emily J. Style and Linda C. Powell, "In Our Own Hands: Diversity Literacy," *Transformations: The New Jersey Project Journal* (1995).
[167] Baxter, telephone interview.

and includes hotline information for social and legal service agencies.[168] The facilities should also provide a means for residents to contact service agencies in a confidential setting if they do not feel comfortable or safe discussing sensitive issues with facility staff.

- Invite LGBT community groups and service agencies to provide resources such as counseling, HIV-education, and substance abuse in placement facilities so that youth are familiar with these organizations when their placements are completed and can draw on them, which can help to reduce recidivism.[169]

- Organize LGBT support groups in a neutral, inconspicuous location so that LGBT youth feel comfortable and safe to attend and receive support from staff and peers.

- Clearly designate the ombudsperson as a confidential resource whom youth may contact, providing a safe outlet for LGBT youth to deal with problematic issues,. All youth should be made aware, through orientation materials as well as posters, that they can contact the ombudsperson with any problems they might have.

[168] Anonymous youth, personal interview, 31 January 2001.
[169] Baxter, telephone interview.

Next Steps

This report is the first of its kind. One of the main goals of writing this report was to put the issues described herein on the public policy agenda of policy makers and advocates in New York City and New York State. The findings described in this report clearly illustrate that the experiences of LGBT youth in the juvenile justice system differ dramatically from those of their non-LGBT peers. LGBT youth are subject to a lack of awareness about their existence and needs in the system, a scarcity of appropriate sentencing options, threats to their physical and emotional safety, staff ill-equipped to work with them, inconsistent or non-existent policies, and a lack of services that are sensitive to their needs.

These findings reveal deep and complex problems that must be investigated further. Organizations that work with LGBT youth should document their clients' experiences in the juvenile justice system, building on the research of this report. Similarly, these organizations should continue to gather information from attorneys, judges, social workers, facility staff and administrators, so that this report may be updated and enriched in the future. Most importantly, DJJ and OCFS should open their doors to researchers, facilitating a thorough evaluation of their effectiveness in dealing with LGBT youth. The lack of access that we encountered was a hindrance to a complete evaluation.

It is in part due to this lack of access that the recommendations contained herein are framed in general terms. OCFS and DJJ did not provide us with specific information on their programs, their training and their staffing structures on which recommendations could be based. Moreover, any hope for successful implementation would require the participation of OCFS and DJJ in developing these recommendations. Thus, we urge that DJJ and OCFS develop task forces similar to the ACS task force that studied the experiences of LGBT youth in the New York City foster care system.[170] These task forces would be charged with examining the recommendations of this report, conducting

[170] *Improving Services for Gay and Lesbian Youth in NYC's Child Welfare System.*

further inquiry and developing strategies and implementation plans for change. These task forces should include professionals from throughout the ranks of the juvenile justice system, including attorneys, judges, social workers and facility staff, ensuring that the process is inclusive enough to lead to positive solutions as well as the broad base of support necessary for effective change.

Finally, we encourage advocates for youth in the juvenile justice system and advocates for LGBT youth to keep this issues on the agenda of policy makers and implementers, through use of lobbying, media, public education and other advocacy tools. In taking steps to improve the treatment of all youth in the juvenile justice system, the specific experiences of LGBT youth can be highlighted as particularly poignant and troubling evidence of a system in need of repairs. Those who support broader changes in the juvenile justice system should include LGBT youth in their work and advocate to improve the conditions for LGBT youth within the juvenile justice population.

Appendix A: Methodology

We began with a thorough literary review of all existing research on the numbers of LGBT youth in the juvenile justice system, as well as information on experiences of LGBT youth within that system in New York or elsewhere. However, we were not able to find any concrete, systematic studies on these points. Therefore, we focused on data that could be used to examine our research goals from various angles, for instance, looking at the issues facing LGBT youth that might result in their entry into the juvenile justice system. The resulting literature—focusing on family and social problems, mental health issues, substance abuse, homelessness, delinquent behavior and several other factors—is listed in the bibliography contained herein.

Subsequent to completing the literature review, we began the process of conducting first person interviews with professionals involved in various aspects of the juvenile justice system in New York. These interviews captured a broad range of the system, including administrators of Legal Aid and other service providers, Legal Aid attorneys and social workers, judges in the family court system and officials at DJJ and OCFS, though OCFS only granted a brief telephone interview. We also spoke with juvenile justice administrators in cities that had considered LGBT-specific policies. The interviews were primarily one-on-one, but a few were conducted with groups of individuals. Additionally, we conducted individual interviews with LGBT youth currently or formerly involved with the New York juvenile justice system.

Neither DJJ nor OCFS would grant us access to the juvenile facilities, despite compliance with their procedures for requesting access. Moreover, several information requests to both agencies were denied.

The names of Legal Aid Society Juvenile Rights Division attorneys and social workers, New York City Family Court judges, OCFS facility social workers, and youth are omitted to protect the anonymity of our sources.

Appendix B: Glossary

Administration for Children's Services (ACS)

The New York City agency charged with investigating allegations of child abuse/neglect, encouraging family stability and, when necessary, placing children in foster care or adoptive homes.

Alternative to Detention (ATD)

ATD's are community-based programs throughout New York City that serve youth who might otherwise be held in detention while awaiting disposition of their cases. Programs consist of educational, recreational and counseling components.

Booking

First stop for youth during intake to the Department of Juvenile Justice.

Department of Juvenile Justice (DJJ)

The New York City government agency that provides secure and non-secure detention as well as Alternative to Detention programs for alleged juvenile delinquents and juvenile offenders whose cases are pending in court, and for post-adjudicated juveniles awaiting placement with the State.

Facility

Place where youth are remanded to or detained in, run by or contracted out by DJJ, OCFS or ACS.

Family Court

Each borough of New York City has its own Family Court. Family Court judges hear delinquency, PINS and neglect and abuses cases, among others.

Finding

Decision made by Family Court as to whether charges against an accused juvenile delinquent have been proven beyond a reasonable doubt. This is equivalent to a verdict of guilt in adult criminal proceedings.

Juvenile delinquent (JD)

When a person who is under 16 years old, but is at least seven years old, commits an act that would be a "crime" if he or she were an adult, and is then found to be in need of supervision, treatment or confinement, the person is called a "juvenile delinquent." The act committed is called a "delinquent act." All juvenile delinquency cases are heard in Family Court.

Juvenile offender (JO)

Children who are 13, 14 and 15 years old who commit certain designated serious or violent acts may be prosecuted as adults. These cases are heard in Supreme Court, but may sometimes be transferred to the Family Court. Juvenile offenders are subject to more serious penalties than a juvenile delinquent, but are placed on OCFS facilities with JD's.

Juvenile Rights Division (JRD)

The attorneys who are assigned to represent the majority of indigent youth accused of being JD's. Division of the Legal Aid Society.

Legal Aid Society

Organization that provides legal representation to those who cannot afford private attorneys, including JD's and JO's.

Lesbian, gay, bisexual, and transgendered (LGBT)

As used in this paper, LGBT covers any and all persons who self-identify as being attracted to persons of the same-sex or persons of both sexes, or who identify or present themselves as a gender other than their biological sex.

Non-secure detention facility

Non-secure detention (NSD) is characterized by the absence of restrictions such as locks on doors. Residents are staff supervised and may leave the NSD group homes if escorted by staff. Alleged juvenile delinquents between the ages of 7 and 15 may be housed in NSD facilities located throughout the city.

Office of Children and Family Services (OCFS)

A New York State agency that administers the institutional placement of minors after juvenile delinquency findings.

Out

Person who is open about her or his sexual orientation and/or gender identity.

Person in Need of Supervision (PINS)

A child under the age of 16—or, as of November 2001, under the age of 18—who does not attend school, or behaves in a way that is dangerous or often disobeys her or his parent(s), guardians or other authorities, may be found to be a Person In Need of Supervision based on a petition filed by her or his parent(s).

Remand

The temporary removal of a child from his or her home during the pendency of a Juvenile Delinquency, PINS or abuse and neglect proceeding. In New York City, youth are remanded either to ACS (in abuse and neglect or PINS cases) or DJJ (in delinquency cases).

Secure detention facility

A secure juvenile detention facility has physically restricting construction, hardware and procedures. Alleged juvenile delinquents and juvenile offenders over the age of 10 may be housed in secure detention.

Transsexual

The term transsexual generally refers to a person who has taken steps to permanently or semi-permanently alter her or his sex, including hormone therapy or sex-reassignment surgery. However, the term is often misappropriated to refer to any transgendered person.

Transgendered

A transgendered person is one who identifies or presents as a gender other than his or her biological sex.

Youth detention counselor (YDC)

Frontline staff person in a juvenile facility.

Youthful offender (YO) procedure

The youthful offender procedure allows certain youth between the ages of 16 and 19 to avoid a criminal conviction even though he or she is subject to adult criminal procedures.

Appendix C: Bibliography

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